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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/841,451	04/24/2001	Leslie E. Mace	4502US	5355

24247 7590 03/30/2004

TRASK BRITT  
P.O. BOX 2550  
SALT LAKE CITY, UT 84110

EXAMINER

NASSER, ROBERT L

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 03/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/841,451

Applicant(s)

MACE ET AL.

Examiner

Robert L. Nasser

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on 12 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8, 10-19, 21-30, 42-49, 75-77, 79, 81-84, 86 and 88 is/are rejected.
- 7) ☒ Claim(s) 9, 20, 78, 80, 85 and 87 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Applicant successfully overcame the rejection based on the Labuda reference. However, Orr et al, cited in the previous action, shows the same subject matter. Hence, the finality of the previous action is being withdrawn and the following new action issued.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 8-, 10-19, 21-30, 42-49, 75-77, 79, 81-84, 86, and 88 are rejected under 35 U.S.C. 103(a) as being anticipated by Anderson et al 4440177 in view of Kofoed et al and Orr et al. Anderson et al 4440177 has a respiratory monitoring device with a housing 10 having a bore, a flow sensor 66 communicating with the bore and a first and second detectors 74 and 80. The flow sensor is a differential pressure flow sensor. It does not detect the first and second substances without removing the gas from the housing. However, Kofoed et al shows an alternate method of sensing gas, by shining infrared light through a transparent housing. As such, it would have been obvious to modify Anderson et al to use the measurement scheme of Kofoed, as it is merely the substitution of one known equivalent measurement technique for another. In addition, the carbon dioxide sensor of the combination is an infrared sensor. The oxygen sensor is not a luminescence quenching sensor. However, Orr et al teaches that a luminescence quenching sensor is a known oxygen measuring sensor. Hence, it would have been obvious to modify Anderson et al in view of Labuda et al to use a

quenching sensor, as it is merely the substitution of one known sensor for another. With respect to claims 3-6, 10-19 and 21, Anderson does not show the structure of flow tube and its relationship to the analyte measure devices. Kofoed et al teaches a device making similar measurements that has the recited structure, which result in a compact device. Hence, it would have been obvious to modify Anderson et al to use the structure taught by Kofoed et al, to reduce the size of the device. The examiner notes that each monitor of the combination would have the structure of the monitor of Kofoed et al. The combination shows the remaining claim features, noting with respect to 47 and 48 that the window is configured to measure any respiratory airborne parameter.

Claims 1-6, 8-, 10-19, 21-30, 42-49, 75-77, 79, 81-84, 86, and 88 are rejected under 35 U.S.C. 103(a) as being anticipated by Anderson et al 4440177 in view of Kofoed et al and Blazewicz et al. The examiner notes that this rejection would be overcome if applicant were to establish that the current application and the Blazewicz et al reference were commonly owned or subject to an agreement to assign to common owners, at the time of filing of this application. Anderson et al 4440177 has a respiratory monitoring device with a housing 10 having a bore, a flow sensor 66 communicating with the bore and a first and second detectors 74 and 80. The flow sensor is a differential pressure flow sensor. It does not detect the first and second substances without removing the gas from the housing. However, Kofoed et al shows an alternate method of sensing gas, by shining infrared light through a transparent housing. As such, it would have been obvious to modify Anderson et al to use the measurement scheme of Kofoed, as it is merely the substitution of one known equivalent measurement technique for another. In addition, the carbon dioxide sensor of the combination is an infrared sensor. The oxygen sensor is not a luminescence quenching sensor. However, Blazewicz et al teaches that a luminescence quenching

sensor is a known oxygen measuring sensor . Hence, it would have been obvious to modify Anderson et al in view of Labuda et al to use a quenching sensor, as it is merely the substitution of one known sensor for another. With respect to claims 3-6, 10-19 and 21, Anderson does not show the structure of flow tube and its relationship to the analyte measure devices. Kofoed et al teaches a device making similar measurements that has the recited structure, which result in a compact device. Hence, it would have been obvious to modify Anderson et al to use the structure taught by Kofoed et al, to reduce the size of the device. The examiner notes that each monitor of the combination would have the structure of the monitor of Kofoed et al. The combination shows the remaining claim features, noting with respect to 47 and 48 that the window is configured to measure any respiratory airborne parameter.

Claims 9, 20, 78, 80, 85, and 87 are objected to as being dependent upon are rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 9 defines over the art of record in that none of the art shows the second detection component on a portion of the window, as claimed. Claim 20 defines over the art of record in that none of the art teaches the recited arrangement of pressure ports. Claims 78 and 85 define over the art of record in that none of the art has the first window and second windows oriented in different directions. Claims 80 and 87 define over the art of record in that none of the art has the seat arranged to orient the sources in the manner recited.

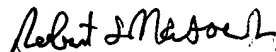
Applicant's arguments filed 12/12/2003 have been fully considered but they are deemed moot in view of the new grounds of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser whose telephone number is (703) 308-3251. The examiner can normally be reached on Mon-Fri, variable hours.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (703) 308-3130. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robert L. Nasser  
Primary Examiner  
Art Unit 3736

RLN  
March 11, 2004

ROBERT L. NASSER  
PRIMARY EXAMINER